

Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2005009

Variance

Hearing Date:

May 11, 2005

Agenda Item:

3

Supervisory District:

4

Applicant/Owner:

David Seven

Request:

Variance to:

Permit a front yard setback of 30-feet where 40-feet is the minimum required in the Rural-43 zoning district.

This variance is requested from the following Zoning Ordinance Section(s):

Section 503, Article 503.4.1

Site Location:

26107 N. 103rd Avenue – Jomax Avenue & 99th Avenue
(Peoria Area)

Site Size:

82,042 square feet (1.88 acres)

Existing Zoning:

Rural-43

Current Use:

Residential

Citizen

Support/Opposition:

None known

Staff

Recommendation:

Approve with stipulations

Existing On-Site and Surrounding Zoning:

1. On-site: Rural-43
North: Rural-43
South: Rural-43
East: Rural-43
West: Rural-43

Existing On-Site and Surrounding Land Use:

2. On-site: Vacant
North: Vacant
South: Single-family residence
East: Single-family residence
West: 103rd Avenue/vacant

Background:

3. **June 12, 1997:** A lot split was recorded (**97-77293**) to create lots 201-17-006A and 201-17-006B.
4. **April 30, 1998:** A lot split was recorded (**97-474015**) to create lots 201-17-006E through 201-17-006H from 201-17-006B.
5. **July 27, 1998:** A building permit (**1998024641**) for a single-family residence was issued for the subject site.
6. **March 11, 1999:** A lot split was recorded to create lots 201-17-006S through 201-17-006U from 201-17-006G.
7. **March 23, 2001:** A lot split was recorded to create the current subject lot configuration, 201-17-006W, as well as 201-17-006V from 201-17-006U.
8. **October 21, 2004:** The applicant acquired the subject property via recorded warranty deed **04-1261921**.
9. **February 3, 2005:** The applicant applied for the requested variance.
10. **March 16, 2005:** Case was withdrawn in error. Hearing rescheduled for May 11, 2005.

Findings:

11. **Maricopa County Department of Transportation:** No response at the time this report was written.
12. **Flood Control District:** No objections to the request.
13. **Environmental Services Department:** No objections to the request.

Site Analysis:

14. The subject site is located on 103rd Avenue, approximately ¾ mile west of the intersection of Lake Pleasant Road and Jomax Road in the Peoria area. The lot is irregular in shape, measuring approximately 389 feet in width, and 266 feet in depth. The north property line follows that of diagonal wash that flows into the Agua Fria River. The total area of the subject site is 82,042 square feet. The subject site is situated on a hillside that slopes downward from the east to the west. Access is taken from 103rd Avenue via a private road.



Aerial view of the subject site and surround area

15. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the applicant.

Standard	Rural-43 (Zoning District)	Proposed Standard
Front Yard Setback	40-feet	30-feet
Rear Yard Setback	40-feet	273-feet
Side Yard Setback	30-feet	116-feet
Street Side Setback	20-feet	79-feet
Maximum Height	30-feet/2-stories	15-feet/1-story
Minimum Lot Area	43,560 square feet	82,042 square feet
Minimum Lot Width	145-feet	389-feet
Lot Coverage	15%	2.5%

*Standards indicated in **bold** do not meet minimum base zoning standards.

Land Use Analysis:

16. The subject site is located in the northwest valley near the City of Peoria. The subject site is not part of a recorded subdivision. Development of this immediate area is through the lot splitting process, with much of it occurring in the last seven years.
17. The surrounding area is residential in nature, mostly zoned Rural-43. The incorporated areas of Peoria are located approximately ¼ mile to the east, with subdivisions within the general vicinity. The Agua Fria River runs ½ mile to the west of the subject site. Much of the general area is experiencing residential development.
18. Staff research indicates that four other Board of Adjustment cases have been heard within the vicinity of the subject property. A summary of these requests include the following:
- Case **BA2001001**, located at 25811 N. 101st Avenue, was a request to permit a proposed detached accessory structure to setback 3-feet from the side (east) property line where 30-feet is the minimum required, and to permit an existing single-family residence to setback 75-feet from the rear (south) property line where 80-feet is the minimum required. The first request was denied, and the second approved by the Board of Adjustment on May 15, 2001. This site is approximately ¼ mile from the subject site.
 - Case **BA2002009**, located at 9746 W. Mariposa Grande Road, was a request to permit a proposed single-family residence to setback 33-feet from the side (west) property line where 53-feet is the minimum required. The Board of Adjustment approved the variance request on May 8, 2002. This site is approximately 1¼ miles from the subject site.

- Case **BA2002033**, at 9748 W. Camino De Oro, was a request to permit an existing accessory structure to setback 18-feet from the side (east) property line where 30-feet is the minimum required. This request was approved by the Board on May 8, 2002. This site is approximately 1½ miles from the subject site.
- Case **BA2002118**, at 24024 N. 97th Avenue, was a request to permit a proposed accessory structure to occupy 39.4% of the rear yard where 30% is the maximum allowed in the Rural-43 zoning district. This request was approved on February 12, 2003 by the Board of Adjustments. This site is approximately 1¾ miles from the subject site.

Plan Analysis:

19. The applicant is requesting a variance to permit a front yard setback of 30-feet where 40-feet is the minimum required in the Rural-43 zoning district. The request came about when the applicant proposed building a detached accessory garage. The applicant became aware that the legal definition of what is considered to be the front property line has changed from when the house was originally constructed. The applicant assumed that the (now) side (south) property line was considered the front of the lot. With this recent discovery, it has also been made apparent that the existing single-family residence is no longer in compliance with the minimum setbacks required of the Rural-43 zoning district. Currently, the existing setback is 30-feet from the east property line, which is now considered to be the front property line. The minimum front setback in the Rural-43 zoning district is 40-feet.



Front (south) property line setback

20. The problem was created through a series of lot splits that have resulted in the current lot configuration and definition. In the mid 1990's, the original lot was a large parcel consisting of several acres. Through the years, a number of lot splits occurred reducing the size and dimension of the surrounding lots. In 1998, a building permit for the existing single-family residence was issued for the subject site. Staff speculates that the lot's south property line was defined as the front property line due to the proposed dwelling's orientation.



1999 aerial of subject site showing surrounding parcel configuration

21. In the course of the years following the single-family residence construction, two more lots splits were made by the property owner at that time. With these splits, the ingress/egress easement for the subject site placed the access from the now front (east) property line. At this time, staff is unable to verify the recording of this access easement.
22. In 2003, the adjacent property owners to the south of the subject site had decided to split their parcel and create a one-acre parcel to the west. In doing this, an ingress/egress easement was created along the north property line of the adjacent lot. This easement runs along the side (south) property line of the subject site.



2004 aerial of subject site showing surrounding parcels after splits since 1999

23. The applicant took possession of the subject site on October 21, 2004, after which these parcel splits and easements had been recorded. After review for a proposed detached garage, the applicant became aware of the situation and then submitted the variance application.
24. The alternative to correct the situation would be to record a non-vehicular easement on the current front (east) property line, thereby resulting in defining the south property line as the front. This would bring the existing single-family residence in compliance with the Rural-43 zoning district setbacks and negate the need for a variance. The applicant would then use the existing easement to the south that provides access to parcel southwest of the subject set. However, it has come to staff's attention that the current owner of the adjacent property/easement has expressed no interest in entertaining such a proposal.
25. At this point, the applicant has little recourse in correcting the situation without the need for a variance. Staff is unable to find any additional alternatives that would negate the need for a variance. Because of such a unique situation, staff feels that the applicant has a valid hardship due to a usual circumstance that was not self-created.
26. Staff is of the opinion that this variance should be approved due to a hardship that was not self-created by the applicant but instead occurred through a series of events that happened before taking possession of the subject site.

Recommendation: (BA2005009)

27. Staff recommends **approval** of the variance request based on the following:
 - The relief requested is the minimum required necessary to provide the applicant with full use and enjoyment of the property.
 - The hardship is of usual circumstances and is not self-created.
 - The request does not conflict with the intent of the Zoning Ordinance, and will not have a negative impact on surrounding properties.

Subject to the following stipulations:

 - a) Compliance with the boundary survey dated February 3, 2005.
 - b) The applicant shall obtain all necessary permits for all proposed structures on the subject site prior to commencing construction.
28. If the Board finds that a reasonable use of the property can be made without this variance, then this request should be denied.

jac

Attachments: Case Map BA2005009
Zoning Map
Assessor Map
Site Plan
Application
Supplemental Questionnaire
Flood Control Memo